Ohio
Retirement
Study
Council

30 East Broad Street, Suite 219
Columbus, Ohio 43215
PHONE: 614-228-1346
FAX: 614-228-0118

Am. Sub. H.B. 96 of the 136th General Assembly

Rep. Stewart

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ORSC Recommendation

Staff Contact
Jeffery A. Bernard
(614) 228-5644

Summary of Am. Sub. H.B. 96 (biennial budget bill)

Am. Sub. H.B. 96 contains a number of provisions relating to the state retirement systems. This analysis details only the provisions of the budget bill pertaining to the state retirement systems. These provisions are:

1) Transfer of Administration of the Public Employees Deferred Compensation Program to the Board of the Ohio Public Employees Retirement System;
2) Exclusion of Precinct Election Officials from Public Employees Retirement System (PERS) Service Credit;
3) Department of Administrative Services, State Agency, State Retirement Systems, and the ORSC; and
4) Withholding of School District Income Tax.

Transfer of Administration of the Public Employees Deferred Compensation Program to the Board of the Ohio Public Employees Retirement System

The Ohio Public Employees Deferred Compensation Program (ODC) is a 457(b) retirement plan available to all Ohio public employees. A 457(b) plan is available for employees of certain state and local government and non-profit organizations. It allows participants to defer tax on voluntary retirement savings. ODC provides a supplemental, elective, retirement plan to participants. ODC is governed by a 13-member Board. This ODC Board is the same as the PERS Board, except that the ODC board has two additional legislative members (one from the House of Representatives and one from the Senate). 77% of ODC participants are PERS members. H.B. 96 abolishes the ODC Board and transfers the governance and administration of the ODC program to the PERS Board.[1]

There is in existing law and practice considerable overlap between the governance and administration of ODC and PERS. All 11 members of the PERS board are also members of the ODC board. ODC currently contracts with PERS for a variety of services, including human resources, mail operations, internet and IT consultation services, and leadership. According to PERS staff, PERS administration of the ODC program will allow the existing ODC staff to focus on administering the 457(b) plan itself rather than the ODC administrative functions.

ODC participant accounts and PERS member accounts will remain, as under current law, separate under the amendment. The amendment is largely an administrative change.

ORSC Recommendation

The ORSC recommend approval of this primarily administrative change to the ODC program.

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[1] R.C. 148.02.

Exclusion of Precinct Election Officials from PERS Service Credit

Existing law provides that a poll worker is not a "public employee" for purposes of PERS coverage if the poll worker receives less than $600 per calendar year, or, in a year in which there is more than one primary and one general election (such as 2022), an additional amount not to exceed $400. The poll worker provisions are designed to prevent temporary poll workers from being considered members of PERS, which would result in them receiving service credit and providing employee and employer contributions to PERS. This policy position was referenced by the ORSC in its approval of the changes made in 2022 that added the additional $400 limit. Due to increases in poll worker pay, these amounts would need to increase over time, but existing law does not include a mechanism to increase those amounts.

H.B. 96 would exclude service as a "precinct election official" from PERS credit if that was the only service done by the individual.[2] The ORSC understand the intent of the change to eliminate the need to periodically increase the poll worker pay in law. However, there may be unintended consequences in fully excluding these individuals, particularly for those members who are retired or are re-employed retirants.

ORSC Recommendation

The ORSC recommend removal of this provision from H.B. 96. The ORSC note that the issue of poll worker pay and PERS credit should be reviewed more fully in future legislation.

Department of Administrative Services, State Agency, State Retirement Systems, and the ORSC

The Revised Code includes a number of provisions that apply to "state agencies." "State agency" under R.C. 1.60 excludes the state retirement systems (and ORSC). Because neither any of the retirement systems nor the ORSC are a "state agency," they are not directly administered by the Department of Administrative Services (DAS). This separates the *administration* of the retirement system trusts and the ORSC from the executive branch of state government. H.B. 96 includes a definition of "state agency" that would explicitly include the state retirement systems and the ORSC.[3] This would blend the administration of the retirement systems and ORSC into DAS.

ORSC Recommendation

The ORSC recommend disapproval of amendments to R.C. 124.184 that would include the state retirement systems or the ORSC as a "state agency."

[2] R.C. 145.012.
[3] R.C. 125.184.

Withholding of School District Income Taxes

Under current law, an income tax withholding mechanism exists for benefits paid from the state retirement systems. H.B. 96 includes a provision that would authorize a retirement system benefit recipient to request that a state retirement system withhold school district income taxes in addition to state and federal tax withholdings.[4] This would be effective for the January 1, 2026, tax year. Additionally, the bill authorizes the tax commissioner to adopt rules governing the withholding provisions, both for the school tax and more generally the existing income tax withholding. Currently, the retirement systems adopt rules governing the withholding provisions. This analysis addresses administrative issues identified by the state retirement systems related to this provision.

According to a majority of the retirement systems, implementation of the tax withholding provisions of the budget bill will have administrative expenses. The increased expenses will be for necessary upgrades to existing computer systems or requiring staff to manually make the withholding calculations. There is uncertainty on the cost impact of the bill as the tax withholding is an elective choice made by the benefit recipient. There are currently 188 school districts in Ohio that have taxing authority. If this provision remains part of the bill, The ORSC recommend that the requirement be delayed beyond January 1, 2026, to allow the systems time to properly implement the bill's provisions.

Finally, the tax commissioner should not have the authority to bind the retirement systems through rulemaking. This ability of the tax commissioner to bind the systems through rules would cause the systems to become beholden to an external rulemaking authority apart from their respective boards. The ORSC recommend disapproval of this provision of the bill or limit the tax commissioner's rulemaking to the new "retirement plans" defined in the bill.

ORSC Recommendation

Should the income tax withholding provisions remain part of H.B. 96, the ORSC recommend all of the following amendments:

1) Delay of the requirements beyond January 1, 2026, to allow the systems time to properly implement the bill's provisions; and
2) Removal or limiting the tax commissioner rulemaking over the state retirement systems.

Summary of ORSC Recommendations

The ORSC recommend all of the following regarding Am. Sub. H.B. 96:

1) Recommend approval of the transfer of the governance and administration of the Ohio Deferred Compensation program to the Board of the Ohio Public Employees Retirement System;

[4] R.C. 5747.071.

2) Recommend removal of provisions regarding precinct election officials from PERS service credit and instead review the issue more fully in future legislation;
3) Recommend disapproval of inclusion of the state retirement systems and the ORSC as a "state agency" in R.C. 125.184; and
4) Should the income tax withholding provisions remain part of H.B. 96, all of the following:
    a. Delay of the requirements beyond January 1, 2026, to allow the systems time to properly implement the bill's provisions; and
    b. Removal or limiting the tax commissioner rulemaking over the state retirement systems.